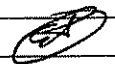



Findings and Recommendations Regarding the Issuance of Federal Fish and Wildlife Permit TE 190109-0 to the Sonoma Office of Education to Allow Incidental Take of the Sonoma County Distinct Population Segment of the California tiger salamander as a Result of the Dutton Avenue School Project, Santa Rosa, Sonoma County, California

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I. DESCRIPTION OF THE PROPOSAL

Proposed Action

The U.S. Fish and Wildlife Service (Service) proposes to issue an incidental take permit (Permit) to the Sonoma County Office of Education (SCOE or Applicant) in Sonoma County, California under the authority of section 10(a)(1)(B) and section 10(a)(2) of the Endangered Species Act of 1973, as amended (Act) for a period of 5 years. SCOE requested incidental take coverage for two species (Covered Species), the federally endangered Sonoma County Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*) (tiger salamander), and one plant, the endangered Sebastopol meadowfoam (*Limnathese vincularis*) (meadowfoam). The Intra-Service section 7 biological opinion also discusses project related affects to Burke's goldfields (*Lasthenia burkei*) and Sonoma sunshine (*Blennosperma bakeri*) (Service 2008). Although take of plant species is not prohibited under the Act and therefore cannot be authorized under an incidental take permit, the plant species would be included on the permits in recognition of the conservation benefits provided to the species under the HCP. Assurances provided under the "No Surprises" rule at 50 CFR 17.3, 17.22(b)(5), and 17.32(b)(5) would extend to all Covered Species.

Under the Permit, SCOE would receive authorization to take tiger salamanders incidental to the construction associated with the proposed Dutton Avenue School within a 4.42-acre area, as described in the Low-Effect Habitat Conservation Plan for the California Tiger Salamander and Sebastopol Meadowfoam, Proposed Community School Site, Santa Rosa, California (HCP) (Stromberg 2008). The HCP submitted by SCOE, as part of their Permit application, describes the project in detail, together with the conservation measures that would be implemented to avoid, minimize, and mitigate incidental take of tiger salamanders.

In addition, and consistent with the U.S. Department of the Interior's "No Surprises" regulation [50 *Code of Federal Regulations* (CFR) 17.32(b)(5)], SCOE is seeking assurances of no further mitigation requirements for the Covered Species for this project while the permit is in effect.

Documents used in the preparation of these findings and recommendations include: (1) SCOE Permit application; (2) June 2008 Final Low-Effect HCP (Stromberg 2008); (3) Screening Form for Low-Effect HCP Determinations and Environmental Action Statement (Service 2008); (4) December 2005 Final Santa Rosa Plain Conservation Strategy (SRPCS); (6) November 2007 Programmatic Biological Opinion for U.S. Army Corps of Engineers (Corps) Permitted Projects that May Affect California Tiger Salamander and Three Endangered Plant Species on the Santa Rosa Plain, California (Programmatic BO) (Service 2007); and (7) Intra-Service Biological

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Opinion on Issuance of a Section 10(a)(1)(B) Incidental Take Permit for the Sonoma County Office of Education Low-Effect HCP (Service 2008). These documents are hereby incorporated by reference, as described in 40 CFR 1502.21.

Project Description

The SCOE has proposed to construct a new community school on 4.42 acres (ac) (1.79 hectares (ha)) in the City of Santa Rosa, Sonoma County, California. The proposed community school will provide an alternative learning environment for 12 to 18-year-old students that encounter difficulties in a traditional school setting and/or exhibit negative behavior patterns in either school or the community at large. The school will include 21,000 square feet (ft²) (1,951 square meters (m²)) of buildings, play fields, and attendant facilities. The buildings will include a 1,000 ft² (93 m²) administration building, two large classrooms with a combined area of 6,000 ft² (557 m²), two medium-sized classrooms with a combined area of 3,000 ft², five standard classrooms with a combined area of 5,000 ft² (465 m²), and a 5,700 ft² (530 m²) multi-use room. The multi-use room will include a restroom, a kitchen, a stage and assembly area, and an indoor play area. Outdoor Play areas will include two basketball courts and a field that will serve as a combined soccer field-baseball field. Entry access and 25 parking spaces will be provided along with a car pickup-drop off area. The existing residence and warehouse/garage in the northwest quarter of the site will be retained for administrative purposes and provide storage facilities. Construction is proposed for 2009. The project will result in permanent affects to 4.13 ac (1.67 ha) of California tiger salamander upland dispersal habitat and 0.07 ac (0.03 ha) of Sebastopol meadowfoam habitat and California tiger salamander breeding habitat.

Conservation Measures

Section 7 of the HCP contains both general and species-specific minimization and mitigation measures (Stromberg 2008). General avoidance and minimization measures include the following:

1. A biological monitor will be available to be on-site every day while construction and earthwork is in progress on the site. The biological monitor will notify the Service and the California Department of Fish and Game (CDFG) if any tiger salamanders are found and/or relocated to a Service pre-approved location. The biological monitor will prepare a written summary of the entire operation for submittal to the Service and CDFG within 48 hours of each event.
2. A training session will be given by the biologist to all construction workers before work is started on the project. After initial training, all new personnel will be given the training as well. The training session will provide pictures of the Covered Species, information on their biology, measures required to protect these species, relevant Federal and State regulations, penalties for harming or harassing listed species, and what to do if a listed species is found. If a tiger salamander is observed on the site by a worker, the worker

will immediately inform the monitor or biologist. All work will halt and machinery turned off within 100 feet of the animal until a biologist can capture and remove the animal from the work area. Service-approved biologists are the only persons allowed to handle tiger salamanders. Any tiger salamanders found in the work area will be relocated to pre-approved locations within one hour of capture.

3. The biological monitor and the biologist will have halt work authority to prevent harming special status species or when any of these protective measures have been violated. Work will only commence when authorized by the biological monitor or biologist.
4. Before the start of work each morning, the biological monitor will check for animals under any equipment such as vehicles or in stored pipes. The monitor will also check all excavated steep-walled holes or trenches greater than one foot deep for any wildlife. A report of all tiger salamanders observed and the outcome of that observation will be submitted to the Service within 60 days of completion of the proposed project.
5. A Storm Water Pollution Prevention Plan will be developed for the proposed project. Erosion control will be accomplished using conventional techniques suitable for local conditions (soil type, slope, etc.). Applicable protection measures, such as barrier and/or silt fencing and regular on-site monitoring, will be used to protect against inadvertent affects to areas outside the project area during construction.
6. Staging and work areas will be limited to the project site only.
7. All foods and food-related trash items, such as lunch bags, plastic sandwich bags, fast food containers, foods of any type, candy wrappers, chip packages, drink bottles and cans, etc., will be enclosed in sealed trash containers and removed completely from the site once every three days.
8. No pets are allowed at the project site during construction.
9. A speed limit of 15 mph will be maintained within the project area.
10. All equipment will be maintained such that there will be no leaks of automotive fluids such as gasoline, oils, or solvents.
11. Hazardous materials such as fuels, oils, solvents, etc., will be stored in sealable containers in a designated location that is at least 200 ft (61 m) from aquatic habitats on the property to the north.

Consistent with the SRPCS and the Programmatic BO, the applicant has agreed to mitigate for the loss of 4.13 ac (1.67 ha) of tiger salamander upland habitat by purchasing 8.3 credits at a Service approved mitigation bank or conservation bank (Preserve) located within the Santa Rosa

Plain and mitigate for the loss of 0.07 ac (0.03 ha) of meadowfoam habitat by purchasing 0.105 credits at a Preserve also located within the Santa Rosa Plain. The purchase of credits for Sebastopol meadowfoam habitat will be at a Preserve that also has Burke's goldfields and Sonoma sunshine.

II. PUBLIC COMMENT

The Service published a Notice of Availability (Notice), Receipt of SCOE's Low-Effect HCP and incidental take permit application, and announced the availability of its proposed Low-Effect HCP in the *Federal Register* on July 3, 2008 (73 **FR** 38243). The Notice explained that the Permit would allow incidental take of the endangered Sonoma County Distinct Population Segment of the California tiger salamander, contingent upon implementation of the HCP by the Applicant. Publication of the Notice initiated a 30-day public comment period. The public comment period for this Notice ended on August 4, 2008. No public comments were received during or after the 30-day comment period.

III. INCIDENTAL TAKE PERMIT ISSUANCE CRITERIA – ANALYSIS AND FINDINGS

Analysis of Effects

California tiger salamanders would be directly affected by construction activities that disturb upland habitat (small mammal burrows) and breeding areas. A total of 4.13 ac (1.67 ha) of upland habitat will be permanently lost as a result of this project. The purchase of 8.3 credits (3 to 1 ratio) of tiger salamander upland habitat at a Preserve is expected to minimize the loss of this habitat. The ratio was adopted from those developed for the SRPCS and is anticipated to aid in conserving appropriate levels of habitat to support viable populations of tiger salamanders in perpetuity. The avoidance and minimization measures identified above are expected to contribute to the conservation of tiger salamanders by preserving occupied, restored, and created habitat as identified in the SRPCS. Adaptive management and monitoring will be supported through the endowments associated with individual Preserves and is expected to assist in the maintenance of viable populations.

Individual tiger salamanders that are within the project area could be harassed, injured, or killed during construction activities that collapse burrows and unearth individuals. Additionally, any tiger salamanders that are discovered during biological monitoring may also be harassed, injured, or killed during relocation to suitable offsite burrows.

Individual tiger salamanders disturbed by construction activities may attempt above ground movement in an effort to find alternative burrows. Individuals attempting this could be injured or killed by vehicles and/or foot traffic, as well as being exposed to an increased risk of predation and desiccation. Injury or death of tiger salamanders during construction will be minimized by implementing the conservation measures. These individuals may also become trapped in

trenches or holes overnight or encounter oil and other petroleum based products; however implementation of the avoidance and minimization measures should reduce these effects by performing pre-construction surveys and relocating any tiger salamanders discovered.

In addition to direct effects, several indirect effects may also occur to tiger salamanders from construction activities. Reduced fitness and survivability may occur as a result of relocating individuals. Relocated individuals may attempt to return to their capture location expending stored energy reserves and exposure to dry summer conditions. This is expected to be minimized by implementing the conservation measures by having relocation sites identified and approved by the Service prior to relocation.

The proposed project will result in direct effects to 0.07 ac (0.03 ha) of Sebastopol meadowfoam, Burke's goldfields, and Sonoma sunshine seasonal wetland habitat. Even though botanical surveys were conducted and no listed plants were observed, the Applicant assumed presence of the Sebastopol meadowfoam based on the project's proximity to known occurrences. Based on this assumption, all Sebastopol meadowfoam plants and their associated seed source within the action area will be permanently lost as a result of the proposed project. Since Burke's goldfield and Sonoma sunshine share the same habitat as Sebastopol meadowfoam, all Burke's goldfields and Sonoma sunshine plants and their associated seed sources within the action area are also expected to be permanently lost as a result of the proposed project. According to the Programmatic BO, projects that impact suitable listed plant habitat south of Santa Rosa Creek (i.e., South Area) can compensate for adverse affects by preserving occupied habitat or establishing sites with the affected species. Projects that impact suitable Sebastopol meadowfoam habitat in the South Area can compensate with Burke's goldfield, Sonoma sunshine, or Sebastopol meadowfoam credits as long as the site supports the target species (Service 2007). Purchase of occupied and suitable habitat will minimize the impacts to the listed plants by ensuring sites support the species. Adaptive management plans and endowment funding of the Preserves also increase the likelihood that listed plant populations will be viable over the long term and will be protected in perpetuity.

The direct effects of the proposed project will further reduce the size and number of the listed plant populations, and could reduce the extent of the range for each of the listed plant species on the Santa Rosa Plain. The loss of seasonal wetlands where the listed plants have not been found is expected to reduce opportunities for habitat restoration and enhancement of listed plant populations.

Projects covered under the Programmatic BO that result in adverse affects to occupied Burke's goldfields and Sonoma sunshine habitat will be compensated for at a 3:1 ratio of occupied or established habitat (any combination) with success criteria met prior to groundbreaking. Adverse affects to suitable Burke's goldfields and Sonoma sunshine habitat will be compensated for at a 1:1 ratio of occupied or established habitat (any combination) with success criteria met and a 0.5:1 ratio of established habitat prior to groundbreaking. The compensation land will be preserved and managed in perpetuity. In addition, adverse affects to occupied Sebastopol

meadowfoam habitat will be compensated for at a 2:1 ratio of occupied or established habitat (any combination) with success criteria met prior to groundbreaking. Adverse affects to suitable Sebastopol meadowfoam habitat will be compensated for at a 1:1 ratio of occupied or established habitat (any combination) with success criteria met and a 0.5:1 ratio (total ratio of 1.5:1) of established habitat prior to groundbreaking. The compensation land will be preserved and managed in perpetuity.

Direct effects to California tiger salamanders, Sebastopol meadowfoam, Burke's goldfield, and Sonoma sunshine, as a result of proposed project, are expected to be minor and negligible for the following reasons: (1) the small amount of habitat being permanently lost (4.13 ac (1.67 ha) upland habitat + 0.07 ac (0.03 ha) aquatic habitat); (2) low density of small mammal burrows throughout site; (3) no observed occurrences of listed plants; (4) low quality upland habitat (likely the result of almost half a century of disturbance from agricultural practices); and (5) the predominately developed nature of the surrounding lands that have fragmented the area from other suitable habitats. The project is located outside any designated critical habitat for the California tiger salamander; therefore, no critical habitat for this species will be destroyed or adversely modified. No critical habitat has been proposed or designated for Burke's goldfield, Sonoma sunshine, or Sebastopol meadowfoam; therefore, no critical habitat for these species will be affected by the proposed action.

In light of these considerations, the Service has determined that the HCP qualifies as a "low-effect" HCP as defined by the Habitat Conservation Planning Handbook (USFWS and NMFS 1996). Determination of a low-effect HCP is based on the following three criteria:

- (1) implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- (2) implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and
- (3) impacts of the HCP, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

As explained above, the first criterion has been met. The basis for satisfying the second criterion is explained in Section II.B of the EAS (Service 2008b), which, in summary, states that effects on other environmental values and resources are expected to be minor to negligible because: (1) the size of the area impacted is relatively small, 4.42 ac (1.79 ha) and (2) the project would not impact any biologically, culturally, or environmentally sensitive areas or resources. The basis for meeting the third criterion is explained in Section II.C of the EAS (Service 2008b), which states that no significant cumulative effects are expected to occur because present and future projects adjacent to the project area are expected to include, when appropriate, mitigation measures for

the Covered Species; therefore, no additional development will occur without assurances that affects to both listed species are appropriately addressed.

The take allowed under this HCP, considered with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result in a significant cumulative effect to environmental values or resources.

Findings

1. The taking will be incidental.

The taking of California tiger salamanders and Sebastopol meadowfoam would be incidental to the otherwise lawful construction activities associated with the proposed new school. The proposed project complies with all the appropriate local, state, and federal permits (Stromberg 2008).

2. The Applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.

The Service has determined that affects to the California tiger salamander and Sebastopol meadowfoam likely to result from the issuance of the proposed incidental take permit would be adequately minimized and mitigated by the measures described in the HCP (Stromberg 2008; Service 2008; 2008b). The HCP would minimize and mitigate the impact of the proposed taking of the California tiger salamander and Sebastopol meadowfoam through SCOE's implementation of the measures described below.

The SCOE will purchase and conserve at least 8.3 credits of California tiger salamander upland habitat and 0.105 credits of Sebastopol meadowfoam habitat at a Preserve, which will be managed by the bank owner.

- a. Passive relocation will occur the winter prior to construction to exclude California tiger salamanders from the site and work area (Stromberg 2008).
- b. A biological monitor will be available to be on-site every day while construction and earthwork is in progress on the site. Before the start of work each morning, the monitor will check for animals under any equipment such as vehicles or in stored pipes, and in all excavated steep-walled holes or trenches greater than one foot deep.
- c. A biologist will conduct a training session to all construction workers before work is started on the project.

- d. The biological monitor and the biologist will have stop work authority to prevent harming special status species or when any of these protective measures have been violated. Work will only commence when authorized by the biological monitor or biologist.
- e. A Storm Water Pollution Prevention Plan will be developed for the proposed project.
- f. Staging and work areas will be limited to the project site only.
- g. All foods and food-related trash items will be enclosed in sealed trash containers and removed completely from the site once every three days.
- h. No pets are allowed at the project site during construction.
- i. A speed limit of 15 mph will be maintained within the project area.
- j. All equipment will be maintained such that there will be no leaks of automotive fluids such as gasoline, oils, or solvents.
- k. Hazardous materials such as fuels, oils, solvents, etc., will be stored in sealable containers in a designated location that is at least 200 ft (61 m) from aquatic habitats on the property to the north.

Based on the avoidance, minimization, and mitigation measures described above, we conclude that SCOE has minimized and mitigated the impacts of California tiger salamander and Sebastopol meadowfoam take to the maximum extent practicable. The mitigation for California tiger salamander and Sebastopol meadowfoam meets that or exceeds other previously approved, similarly situated projects on the Santa Rosa Plain, Sonoma County, California.

Alternatives Considered. SCOE considered two alternatives that would have fewer direct affects to California tiger salamander and Sebastopol meadowfoam than the proposed action and its associated HCP; however, the alternatives did not meet SCOE's needs, did not contribute to the conservation goals and objectives described in the HCP, provided fewer ecological benefits to listed species, did not meet the requirements set by the California Department of Education's School Facilities Planning Division (SFPD) (Stromberg 2008), or were impracticable. The alternatives are described below.

No Action. Under the No-Action Alternative, the proposed school would not be constructed and the Sonoma County Office of Education would not implement this HCP or receive a section 10(a) incidental take permit from the Service. The

project site would remain undeveloped and the existing California tiger salamander upland habitat and the Sebastopol meadowfoam wetland habitat would remain.

The SCOE examined 29 alternative locations for construction of the proposed school. However, all 29 locations were rejected for one or more of the following reasons: (1) local governments had existing plans for the site(s); (2) the site(s) did not satisfy the requirements of the California Department of Education's School Facilities Planning Division (SFPD); (3) the site(s) was too large and therefore, too expensive; or (4) the landowner(s) did not want to sell.

As identified in the Programmatic BO (Service 2007) the properties to the north, east, and south of the proposed project have been identified as "developed" or as "future development." Under the No-Action Alternative, California tiger salamander and Sebastopol meadowfoam habitat on the site would remain, but would likely continue to decline because of future development of the surrounding undeveloped parcels.

Much of the area surrounding the proposed project is currently developed and full watershed protection of the existing on-site wetlands would not be possible. In addition, buffering the on-site wetlands from the impacts of adjacent existing and future development would not be possible because the wetlands occur along the site's boundaries (with one wetland extending onto the property to the north). In some instances, such as the proposed project, Preserves that retain their hydrologic function and are buffered from nearby development can offer greater ecological benefits to listed species and their habitats than avoidance of on-site features; this is especially true for small remnant habitats that were once part of larger contiguous areas, but are now isolated within urbanized landscapes. For these reasons, avoidance of the seasonal wetlands in whole or in part, would be expected to yield little ecological benefits in terms of long-term preservation of wetland functions and values or protection of listed species.

The upland and aquatic habitats that would be avoided under the No-Action Alternative would be small. The Vernal Pool Task Force recognized that small preserves in urbanized settings are likely to experience a loss of functions and values, that surrounding upland habitat is required to buffer wetlands, and that large preserves are better than small ones (CH2M Hill 1995). In general small preserves are more difficult to manage than large preserves, require a larger operational endowment, and may not sustain viable populations of listed species.

The No-Action Alternative is not likely to yield long-term benefits to listed species and would not meet the educational needs of the County. For these reasons, the No-Action Alternative was rejected.

Reduced-Take Alternative. The State of California's SFPD requires school districts to consider several criteria when planning to acquire property for a school. Among the criteria established by the SFPD is the size of the site and its proximity to power lines, airport runways, roads with high volumes of traffic, railroad tracks or easements, high pressure transmission lines, or freeways.

To meet SFPD criteria, the site must be large enough for all the required facilities, including classrooms, support facilities, recreation areas, open space access, areas for staff, and parking and bus loading. The site must also be large enough to permit future expansion (to accommodate a larger student population in an urbanizing area). If a site has less than the minimum usable area, the district may be unable to provide students with an adequate educational program, including physical education. Based on State requirements, if 30 percent of a site is unusable, the site would not meet SFPD criteria.

The Reduced-Take Alternative would reduce the area available for constructing required facilities in order to reduce take of listed species. The proposed project site is small (4.42 ac) and the existing structures (residence, warehouse, and garage) would be retained for administrative purposes and to provide storage facilities (Stromberg 2008). The proposed facilities have their respective minimum-size requirements and no facilities can be removed from the plan and still satisfy state requirements.

School facilities could be built more closely together to reduce the total area of tiger salamander upland habitat directly affected and to avoid the wetlands at the north and south ends of the property. However, indirect affects to tiger salamanders that may persist on the undeveloped parcel north of the proposed school or within the undeveloped portions of the school site would still occur. Currently tiger salamanders to the north of the proposed school have reduced access to potential breeding sites to the south of the proposed school as a result of existing structures (wooden privacy fence). The retention of tiger salamander upland habitat around the new school facilities and paved surfaces would be expected to provide little value to the species because the patches of habitat would not be connected to one another or to larger areas off site.

In addition, indirect affects to Sebastopol meadowfoam and the existing seasonal wetlands, would likely occur due to increased runoff. Construction activities that create impervious surfaces increase the amount of storm water runoff from a site. Storm water runoff from buildings and paved surfaces would likely introduce a variety of chemicals (including petroleum products) to the wetlands, thus affecting water quality and chemicals used to maintain landscaping, such as fertilizers and pesticides would also be introduced to the existing wetlands. In addition,

irrigation of landscaped features would likely result in wetlands of a more permanent nature that would also further reduce the value of the wetlands for listed species.

The Reduced-Take Alternative would also introduce unacceptable site development constraints and result in unnecessary economic burdens to the Applicant without providing significant ecological benefit (Stromberg 2008). The Service would also require tiger salamander mitigation for all non-hardscape areas of a proposed development site whether or not some fragments remain undeveloped. For all of the above reasons, the Reduced-Take Alternative was rejected.

3. The Applicant will ensure that adequate funding for the Habitat Conservation Plan and procedures to deal with unforeseen circumstances will be provided.

SCOE has ensured funding for implementation of all take avoidance, minimization, and mitigation measures, and changed circumstances as specified in the HCP (Stromberg 2008) through the purchase of mitigation credits at a Preserve prior to project development. SCOE will provide the Service a copy of the sales agreement for the purchase of all mitigation credits prior to construction of the proposed project. The owner of the Preserve will assume all responsibilities for funding of annual maintenance, and the fulfillment of all monitoring and reporting activities in perpetuity.

The HCP does not contain an adaptive management strategy for the following reasons: (1) the HCP has a limited scope; and (2) the mitigation would contribute to a regional preserve effort for the California tiger salamander and Sebastopol meadowfoam that have been approved by the Service.

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

The legislative history of the Endangered Species Act of 1973, as amended, (Act) establishes the intent of Congress that this issuance criterion be identical to a regulatory finding of "no jeopardy" under section 7(a)(2) [see 50 CFR 402.03]. As a result, issuance of this section 10(a)(1)(B) permit was reviewed by the Service under section 7 of the Act. The Service concluded in its biological opinion (Service 2008) that issuance of an incidental take permit for the proposed project is not likely to jeopardize the continued existence of the Sonoma County Distinct Population Segment of the California tiger salamander, Sebastopol meadowfoam, Burke's goldfield, or Sonoma sunshine and is not likely to destroy or adversely modify designated critical habitat for any listed species. The Service also concluded that the proposed project is not likely to adversely affect the many-flowered navarretia (*Navarretia leucocephala* ssp. *plieantha*).

The Service's opinion on the many-flowered navarretia was based on the following: (1) the fact that all but one of the known occurrences of this species occurs outside the Santa Rosa Plain; (2) the closest known occurrence is located approximately 9 miles (14.5 km) northwest of the proposed project; and (3) numerous botanical surveys conducted over multiple years (1993, 1999, 2000, 2001, and 2008), during the appropriate bloom seasons, did not detect the species within the project area (Northern 1993; Valerius 2001; and Stromberg 2008).

The conclusion that the California tiger salamander, Sebastopol meadowfoam, Burke's goldfield, and Sonoma sunshine are not jeopardized or designated critical habitat for any listed species will not be adversely modified is discussed in detail in the Service's Biological Opinion (Service 2008) and summarized above in the Analysis of Effects section of this Findings.

5. Other measures, as required by SCOE of the Service, have been met.

SCOE's HCP has incorporated all elements necessary for issuance of a section 10(a)(1)(B) permit and otherwise required by the Service.

6. The Service has received assurances that the HCP will be implemented.

SCOE will provide the Service a copy of the sales agreement for the purchase of all mitigation credits prior to construction of the proposed project. Implementation of all monitoring and reporting will be provided to the Service by the Preserve owner/operator.

IV. SPECIES ASSURANCES – ANALYSIS AND RECOMMENDATIONS

In addition to obtaining authorization for incidental take of California tiger salamander and the Sebastopol meadowfoam, SCOE is seeking assurances from the Service of no further mitigation for this species in the event of future unforeseen circumstances. Although take of plant species is not prohibited under the Act and therefore cannot be authorized under an incidental take permit, the plant species would be included on the permits in recognition of the conservation benefits provided to the species under the HCP. Assurances provided under the "No Surprises" rule at 50 CFR 17.3, 17.22(b)(5), and 17.32(b)(5) would extend to all Covered Species.

The purpose of the Department of the Interior's "No Surprises" regulations [50 CFR 17.32(b)(5)] is to provide assurances to non-Federal landowners participating in habitat conservation planning that no additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources will be required from an HCP permittee for species adequately covered by a properly implemented HCP without the consent of the permittee. Species are adequately covered if the HCP addresses the conservation of the species and its habitat and if all section 10 issuance criteria have been met. All section 10 issuance criteria have

been met for the Sonoma Distinct Population Segment of the California tiger salamander and the Sebastopol meadowfoam as described under the "Findings" section above.

V. GENERAL CRITERIA AND DISQUALIFYING FACTORS – ANALYSIS AND FINDINGS

The Service has no evidence that the permit application should be denied on the basis of criteria and conditions set forth in 50 CFR 13.21(b) and (c). SCOE has met the criteria for the issuance of the permit and does not have any disqualifying factor that would prevent the permit from being issued under current regulations.

VI. RECOMMENDATION ON ISSUANCE OF PERMIT

Based on our findings with respect to the proposed action, the Service recommends issuance of the section 10(a)(1)(B) incidental take permit number TE 190109-0 to the Sonoma County Office of Education for incidental take of the Sonoma Distinct Population Segment of the California tiger salamander in accordance with the Applicant's June 2008 HCP. Further, we recommend assurances of no further mitigation requirements from SCOE pursuant to the "No Surprises" regulations 50 CFR 17.32(b)(5).

Susan K. Moore
Field Supervisor,
Sacramento Fish and Wildlife Office

Date

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